

Amendments to the Drawings

The drawings have been amended herein. Replacement sheets for all drawings are included herewith. The amendments to the drawings do not present new matter. Acceptance of the amended drawings is respectfully requested.

Attachment: Replacement Sheets 1-14, Figs. 1-16.

REMARKS

The specification, abstract, and drawings have been amended for clarification purposes only, and do not present new matter. Claims 1-14 have been canceled. New claims 15-28 are presented. Further examination and reconsideration of the presently claimed application are respectfully requested.

Information Disclosure Statement

It is acknowledged that the references listed in the specification need to be cited in an Information Disclosure Statement. Applicants will submit an Information Disclosure Statement in a separate paper.

Objection to the Drawings

Various objections were lodged against the drawings. In response thereto, amended drawings are submitted herewith. We believe the amended drawings obviate the objections lodged in the Office Action. Accordingly, Applicants respectfully request removal of this objection.

Objection to the Specification

Various objections were lodged against the specification. In response thereto, a substitute specification and abstract have been included herewith correcting the various informalities. The substitute specification does not constitute new matter and is believed to obviate the objections lodged in the Office Action. Accordingly, Applicants respectfully request removal of this objection.

Objections to the Claims

An objection was lodged against claims 3-9 and 12-14 as being in improper form. In response thereto, claims 1-14 have been canceled and new claims 15-28 are presented herein. We believe the new claims obviate the objections lodged in the Office Action. Accordingly, Applicants respectfully request removal of this objection.

Section 102 Rejection

Claims 1-2 and 10-11 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,988,350 to Herzberg (hereinafter “Herzberg”). Previous claims 1-2 and 10-11 have been canceled rendering rejection thereto moot. However, new claims 15 and 23 contain some of the same limitations as canceled claims 1 and 10, respectively. Therefore, Applicants will address their arguments toward present independent claims 15 and 23 as it pertains to Herzberg.

The standard for “anticipation” is one of fairly strict identity. A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art of reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987); MPEP 2131. Furthermore, anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, as arranged in the claim. *W.L. Gore & Assocs. V. Garlock*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983). Using these standards, Applicants submit the cited art fails to disclose each and every element of the currently pending claims, some distinctive features of which are set forth in more detail below.

Herzberg does not teach or disclose a receiving member having an aperture of circular enclosed inner diameter that surrounds a central axis extending substantially parallel to the outer edge. Present independent claims 15 and 23 each recite an aperture. More specifically, the aperture is a circular aperture that is enclosed. The enclosed circular aperture has an inner diameter that surrounds a central axis. The central axis extends from a center point through the aperture and parallel to the outer edge of a side of the head-end portion of the implant plate. As shown in the drawings, receiving member 6 includes a circular aperture 7 having an inner diameter that is completely closed (Specification -- Figs. 1A, 1B, 2B, 4B, 6B, 7B, 8B, 10B, 11B, and 12). By enclosing the aperture, any risk of a flexible fastening member, such as a wire cerclage or surgical suture, of being disengaged from the aperture is eliminated. Once the fastening member is inserted through the aperture, the only way in which the member can become disengaged is if the fastening member breaks -- an unlikely outcome given the strength of the fastening member material.

Converse to present independent claims 15 and 23, Herzberg clearly describes cutouts 129 formed within bent-over circumferential section 126 (Herzberg -- col. 9, lines 49-60). Cutouts 129 are not circular enclosed apertures, but instead are "slot-shaped" (Herzberg -- col. 9, lines 59-60). The slot shape is disadvantageous because the fastening material can over time become loose and disengage from the cutouts or slots. Once this happens, the fastening material will no longer be fastened to a stationary point along sections 126 (Herzberg -- Fig. 17). As is known to one skilled in the art, it is deleterious having fastening members which are no longer secured to the supporting plate and, instead, are floating in a way so as to no longer affix the soft tissue material relative to plate.

The open-ended nature of the slots disclosed in Herzberg simply cannot adequately maintain the fastening members around a grouping of bone fragments where screws cannot be sufficiently used. This is primarily due to the cutouts not being the presently claimed apertures, but also nowhere is Herzberg is there any mention that a central axis formed through the cutouts extend parallel to the outer edge of the plate-shaped section 25 (Herzberg -- Fig. 17). In fact, when drawing an axis through slots 129, no parallelism can be formed since the outer edge 126 is circular, not partially or completely square or rectangular as in the present configuration.

For at least the foregoing reasons, Applicants believe independent claims 15 and 23, as well as claims dependent therefrom, are patentable over the cited art. Accordingly, Applicants respectfully request removal of this rejection.

CONCLUSION

The present amendment and response is believed to be a complete response to the issues raised in the Office Action mailed June 16, 2005. In view of the remarks herein, Applicants assert that pending claims 15-28 are in condition for allowance. If the Examiner has any questions, comments or suggestions, the undersigned attorney earnestly requests a telephone conference.

No fees are required for filing this amendment; however, the Commissioner is authorized to charge any additional fees which may be required, or credit any overpayment, to Daffer McDaniel, LLP Deposit Account No. 50-3268/5858-00800.



Respectfully submitted,

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